

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of Petition for)	
Redetermination of)	DOCKET NO. 18060
)	
[REDACTED],,)	DECISION
)	
Petitioner.)	
)	

On May 20, 2003, the Sales and Use Tax Audit Bureau of the Idaho State Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer) asserting additional sales and use tax, penalty, and interest of \$323 for the period of April 1, 2000 through April 30, 2000. On March 1, 2004, the Tax Commission issued a second Notice of Deficiency Determination to the taxpayer asserting additional sales and use tax, penalty, and interest of \$15,010 for the period of May 1, 2000 to March 31, 2003. The taxpayer made a payment of \$12,460 on April 22, 2004.

The taxpayer protested the Notices of Deficiency Determination on April 30, 2004. The taxpayer requested an informal hearing, which was held on September 2, 2004.

The taxpayer runs an on-demand flying service, primarily using its helicopters to transport passengers and freight. At issue in this case is the imposition of tax on the use of helicopters used by the taxpayer in certain contracts with the United States Forest Service (USFS). The helicopters were used to drop water on forest fires. The contracts called for the helicopters to lower a large container into any nearby body of water, scoop up the water, and drop it on the fire. The auditor imposed use tax on the fair market rental value of the helicopters for the times when they were used for such fire fighting services.

Idaho Code § 63-3621 imposes a tax on the storage, use or other consumption of tangible

personal property in Idaho. The use tax is a complementary tax to the sales tax. The tax rate is the same as the sales tax and is imposed on the value of the property. When property is stored, used or consumed in Idaho, the user owes use tax unless he has paid sales tax on the purchase of the property or an exemption applies.

The taxpayer argues that the use of the helicopter is exempted by Idaho Code § 63-3622GG.

That statute states:

63-3622GG. AIRCRAFT. There is exempted from the taxes imposed by this chapter:

(1) The sale, lease, purchase, or use of aircraft primarily used to transport passengers or freight for hire. This exemption includes repair and replacement materials and parts installed in or affixed or applied to, or sold, leased or purchased to be installed in or affixed or applied to, aircraft in connection with the remodeling, repair or maintenance of such aircraft, but does not include tools and equipment utilized in performing such remodeling, repair or maintenance;

(2) The sale, lease or purchase of aircraft for use outside this state by nonresidents, even though delivery be made within this state, but only when:

(a) The aircraft will be taken from the point of delivery to a point outside this state;

(b) The aircraft will not be used in this state more than ninety (90) days in any twelve (12) month period.

The Tax Commission does not disagree that the primary use of the helicopters in question is to transport freight or passengers for hire. The helicopters are only used for water drops when they are needed to fight forest fires. It is the taxpayer's contention that the water the taxpayer drops on fires is "freight." The Commission disagrees.

Idaho Sales Tax Rule 037.06 (IDAPA 35.01.02.037.06) states that services such as aerial logging, applying agricultural products or other products by aerial spraying or dumping, or other similar activities are "aerial contracting services" and are not freight transportation services. In this case, the taxpayer contracts with the Forest Service to assist the Forest Service in fighting fires. The

service the taxpayer provides is aerial dumping of water on the fire. The rule therefore treats the taxpayer's activities as a taxable service and excludes the activities from the definition of freight transportation services.

The service provided by the taxpayer in this case does not fit the commonly understood meaning of "freight," in which the object of the transaction is the transportation of goods, intact, from one point to another. In this case, there is no "property" until the taxpayer goes out and finds it, and afterwards the property, water in this case, is consumed while extinguishing the fire. For these reasons, the Tax Commission holds that the water drops in question do not constitute the transportation of freight for the purposes of the exemption provided by Idaho Code § 63-3622GG.

Subsection (b) of rule 037 (IDAPA 35.01.02.037.06.b) states:

"When aircraft held for resale are used by the owner, aircraft dealer, for aerial contracting services, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service."

Although the aircraft in this case were not held for resale, it is reasonable to impose the tax only on the rental value rather than the entire fair market value of the helicopters.

Finally, the definition of "sale" for the purposes of the Idaho Sales Tax Act is found in Idaho Code § 63-3612. Transactions that fall within this definition are taxable when sold to the ultimate consumer. Included in this definition are sales of intrastate transportation for hire by air of freight or passengers. Pursuant to the statute, the auditor correctly imposed tax on some flights for which the taxpayer did not collect and remit sales tax. The tax on those flights is included in the deficiency amount. The Commission now notes, however, that federal law prohibits states from levying a tax

on: “(1) an individual traveling in air commerce; (2) the transportation of an individual traveling in air commerce; (3) the sale of air transportation; or (4) the gross receipts from that air commerce or transportation.” 49 U.S.C. § 40116(b). The Commission is deleting the tax on those sales from the deficiency because of the federal preemption. The Commission also notes once again the taxpayer’s payment of \$12,460 made on April 22, 2004.

WHEREFORE, the Notices of Deficiency Determination dated May 20, 2003, and March 1, 2004, are hereby MODIFIED, and as MODIFIED, are APPROVED, AFFIRMED and MADE FINAL.

IT IS ORDERED and THIS DOES HEREBY ORDER that the petitioner pay the following tax, penalty, and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>PENALTY</u>	<u>TOTAL</u>
\$1,191	\$41	\$566	\$1,798

Interest is computed through February 28, 2005.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of [Redacted]right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2005, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.
